

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

METASWITCH NETWORKS LTD,

*Plaintiff,*

v.

GENBAND US LLC ET AL.,

*Defendants.*

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CASE NO. 2:14-CV-744-JRG-RSP

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Before the Court is the Report and Recommendation filed by Magistrate Judge Payne on March 1, 2016 (Dkt. No. 288) which recommends that Genband's Motion for Summary Judgment (Dkt. No. 173) be denied as moot because the Court lacks jurisdiction over Genband's declaratory judgment counterclaim for invalidity of U.S. Patent No. 7,657,018. No objections having been filed and for the reasons set forth in the Court's Report and Recommendation, the Recommendation is adopted. Accordingly,

IT IS **ORDERED** that Genband's Motion for Summary Judgment (Dkt. No. 173) is **DENIED AS MOOT**.


Also before the Court is the Report and Recommendation filed by Magistrate Judge Payne on March 3, 2016 (Dkt. No. 293) regarding Metaswitch's Motion for Partial Summary Judgment Limiting Damages Based on Genband's Failure to Mark (Dkt. No. 170). The Magistrate recommended that partial summary judgment that Genband cannot recover pre-suit damages on U.S. Patent No. 6,879,667 ("667 Patent") should be granted because there is no

material fact dispute with respect to the '667 Patent. The Magistrate further recommended that summary judgment be denied for U.S. Patent Nos. 7,680,252 and 7,953,210. No objections having been filed and for the reasons set forth in the Court's Report and Recommendation, the Recommendation is adopted. Accordingly,

IT IS **ORDERED** that, with respect to Metaswitch's Motion for Partial Summary Judgment Limiting Damages Based on Genband's Failure to Mark (Dkt. No. 170), partial summary judgment that Genband cannot recover pre-suit damages on U.S. Patent No. 6,879,667 is **GRANTED**. Summary judgment on the same is **DENIED** for U.S. Patent Nos. 7,680,252 and 7,953,210.

**So Ordered this**

**Apr 8, 2016**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE